

REMARKS

Claims 1-34 are now pending, with claims 1 and 3 being the independent claims. Claims 1-3, 6, 9 and 10 have been amended. Dependent claims 17-34 have been added. Support for the amendments to claims 1 and 3 may be found, for example, at pg. 8, lines 8-18 and pg. 11, lines 4-17; for the amendment to claim 2 at pg. 14, lines 5-7, pg. 18, lines 8-3 and 14-16; and for the amendment to claim 6 at pg. 8, lines 14-18 and pg. 17, lines 20-23 of the specification as originally filed. No new matter has been added. Reconsideration of the application, as amended, is respectfully requested.

Claims 9 and 10 stand objected to based on a minor informality. In response to this objection, Applicant has amended claims 9 and 10 to address the specific objection. Withdrawal of this objection is in order.

Claims 1-16 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,005,926 ("*Mashinsky*") in view of U.S. Patent 6,047,054 ("*Bayless*"). For the reasons which follow, it is respectfully submitted that all claims of the present application are patentable over the cited references.

Amended independent claim 1 is directed to a method comprising the steps of receiving at a processor data transmission addressed to a terminating party, determining at the processor the network service provider associated with the terminating party to enable routing of the data transmission and thereafter: 1) routing the data transmission from the processor to the network service provider (according to an inherently predetermined routing path based on the address of the called number), 2) establishing a connection between the originating party and the network service provider, 3) monitoring at the processor the status of a portion of the data transmission while

the data transmission is in progress to the terminating party and until the connection with the terminating party is terminated, 4) generating at the processor performance information associated with the data transmission based on the monitored status of the data transmission, and 5) reporting the performance information to a third party.

The combination of *Mashinsky* and *Bayless* fails to render the instant claimed invention obvious and unpatentable, because *Mashinsky* and *Bayless*, individually or in combination, fail to teach or suggest all of the steps recited in amended independent claim 1.

Mashinsky (col. 2, lines 16-18) teaches the flexible routing of communication transmissions, wherein a server node determines cost-efficient routing paths via: 1) collecting rate information from network service providers around the world, 2) evaluating the information collected, and 3) generating from the collected information a network topology map for routing (see col. 6, lines 57-66).

In *Mashinsky*, the data information to be sorted and rated by the server is provided to the server by the various telecommunication service carriers (see col. 6, line 7, and lines 9-14). This is in contrast to the current invention, where the server gathers its own data information by utilizing a monitoring protocol to obtain the status of the data transmission connection, i.e., by “monitoring at the processor a status of a portion of the data transmission while the data transmission to the terminating party is in progress and until the connection with the terminating party is terminated,” as recited in amended claim 1.

Mashinsky (col. 5, lines 65-67 and col. 6, lines 1-9) teaches that data information is provided to the server from many different networks, during a single transmission from an originating party to a terminating party, and the information is rated prior to establishing a

connection between an originating party and a network service provider (also see col. 9, lines 15-25). By contrast, in accordance with the claimed invention, the server obtains information from only one network service provider during a single transmission from the originating party to the terminating party, and the information is rated after establishing a connection between an originating party and the network service provider, i.e., performance information associated with the data transmission is generated based on the status of the portion of the data transmission that is obtained while the data transmission to the terminating party is in progress.

The claimed invention includes predetermined routing of information at a node, based on the address of the called number, and the routing occurs along a path that is not altered by the data stored at the processor. This step is inherent to the routing step of claim 1. In contrast, *Mashinsky* (col. 2, lines 16-18 and col. 2, lines 32-43) describes a flexible routing path that is not predetermined but rather, the routing path is determined based on data input from various network service providers, which is stored at the processor. *Mashinsky* thus fails to teach the routing step of amended independent claim 1 which inherently requires a predetermined routing path.

Mashinsky (col. 10, lines 34-43) further teaches that a rate-table database is formed prior to routing of the communication transmission from the originating party to the terminating party. In accordance with the claimed invention, however, the storage of data occurs after routing of the communication transmission has been established with a network service provider, and additional data is obtained after a connection is established between the network service provider and the terminating party. As described at pg. 17, line 18 – pg. 18, line 4 of the specification, a table (see Fig. 2) is completed subsequent to the termination of the connection between the

originating party and the terminating party, and even subsequent to more information being provided by the originating party after the termination of the connection. *Mashinsky* fails to teach or suggest that additional information is stored and rated after a transmission has been established with a terminating party, which concept is encompassed by amended independent claim 1.

Moreover, *Mashinsky* (col. 5, lines 57-65, col. 6, lines 7-39 and col. 7, lines 5-8) clearly teaches that in establishing a connection from an originating party to a terminating party, the server node determines cost efficient routing paths via: 1) collecting rate-information where the network service provider provides information to the node, 2) evaluating the information collected to make routing decisions, 3) and generating a network topology map. Hence, *Mashinsky* (col. 8, lines 47-65) teaches the storage and evaluation of information, prior to selecting and assigning a network service provider.

The temporal sequence of the data transmission and information storage as described in *Mashinsky* differs substantially from the temporal sequence of the steps of Applicant's independent claim 1, where data is not evaluated at the processor but, instead, the processor generates and stores data subsequent to establishing a connection over a "predetermined" routing path with a network service provider and a terminating party. *Mashinsky* fails to teach this claimed concept.

Bayless has been cited to provide the feature that the process is "taking place in a server". However, the combination of *Mashinsky* and *Bayless* fails to achieve the method of independent claim 1. *Bayless* (col. 1, lines 52-64 and col. 2, lines 8-31) discloses a method for accessing telephone functions through a computer system, where specific software and a telephone system

allow for telephone operations to be performed on a personal computer while displaying the local time and location of the calling party, as well as the amount of time a call was on hold. However, the mere fact that *Bayless* recites that the process takes place at the server still does not, when combined with *Mashinsky*, render the amended claims obvious because there is nothing in *Bayless* with respect to the steps of independent method claim 1. Amended independent claim 1 is therefore patentable over the combination of the cited art, because *Bayless* fails provide what *Mashinsky* lacks.

Summarizing, *Mashinsky* and *Bayless*, individually or in combination, fail to teach or suggest Applicant's claimed invention, which in amended independent claim 1, is directed to a method comprising the steps of monitoring, collecting, and reporting performance information related to data transmission, wherein a data transmission addressed to a terminating party is received at the processor and thereafter: 1) routed to the terminating party based on an inherently predetermined network service provider and routing path, 2) its status is monitored, collected and stored during the routing and once a connection is established with the network service provider and thereafter up to and including the time the connection with the terminating party is terminated, and 3) its status is reported to a third party as part of the performance information of the data transmission. *Mashinsky* fails to teach all the limitations of amended claim 1, and *Bayless* fails to cure the deficiencies of *Mashinsky*.

In view of the foregoing, Applicant respectfully asserts that amended independent method claim 1 is patentable over *Mashinsky* in combination with *Bayless* and, therefore, reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) are respectfully requested.

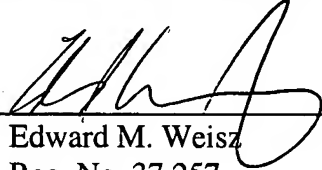
Independent claim 3 is the apparatus in which the method of independent claim 1 is implemented. Accordingly, independent apparatus claim 3 is patentable over the combination of *Mashinsky* and *Bayless* for the reasons discussed above with respect to independent method claim 1.

In view of the patentability of independent claims 1 and 3, for the reasons set forth above, dependent claims 2 and 4-16, as well as new dependent claims 17-34, are all patentable over the cited prior art.

Based on the foregoing amendments and remarks, this application should be in condition for allowance. Early passage of this case to issue is respectfully requested.

Respectfully submitted,
COHEN PONTANI LIEBERMAN & PAVANE LLP

By



Edward M. Weisz
Reg. No. 37,257
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: May 29, 2007